

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-08-SE-1046
	)	
Pinnacle Systems, Inc.	)	Acct. No. 200932100073
	)	
	)	FRN No. 0004897468

**ORDER**

**Adopted:** July 28, 2009

**Released:** July 30, 2009

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Pinnacle Systems, Inc. (“Pinnacle”).<sup>1</sup> The Consent Decree terminates an investigation by the Bureau against Pinnacle for possible violations of section 330(c) of the Communications Act of 1934, as amended, (the “Act”) 47 U.S.C. § 330(c) and section 15.120(d)(2) of the Commission’s Rules (“Rules”), 47 C.F.R. § 15.120(d)(2), regarding the interstate shipment, after January 30, 2008, of personal computer digital television tuners that do not comply with V-Chip technology requirements.

2. The Bureau and Pinnacle have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Pinnacle possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and sections 0.111 and 0.311 of the Commission’s Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that all third-party complaints against Pinnacle before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

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<sup>1</sup> Pinnacle is a subsidiary of Avid Technology, Inc.

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Gary G. Greenfield, Chairman and CEO, Avid Technology, Inc., Avid Technology Park, 1 Park West, Tewksbury, MA 01876, and to counsel for Avid, Jack N. Goodman, Esq., Wilmer Hale, 1875 Pennsylvania Avenue, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and Pinnacle Systems, Inc. (“Pinnacle”),<sup>1</sup> by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Pinnacle violated section 330(c) of the Communications Act of 1934, as amended (the “Act”),<sup>2</sup> and section 15.120(d)(2) of the Commission’s rules,<sup>3</sup> regarding the interstate shipment, after January 30, 2008, of personal computer digital television tuners (“PCTV tuners”) that do not comply with the V-Chip technology requirements because they lack the ability to block programs from viewing based on ratings or to adapt to new rating systems.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging violations of the V-Chip technology requirements.
  - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.

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<sup>1</sup> Pinnacle is a subsidiary of Avid Technology, Inc.

<sup>2</sup> 47 U.S.C. § 330(c).

<sup>3</sup> 47 C.F.R. § 15.120(d)(2).

- (g) “Personal computer digital television tuners” or “PCTV tuners” means devices, sold without associated display screens, that are designed to receive digital television signals for viewing on personal computers.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the investigation commenced by the Bureau’s October 20, 2008 Letter of Inquiry (“LOI”)<sup>4</sup> regarding whether Pinnacle violated section 330(c) of the Act, and Section 15.120(d)(2) of the Rules, by shipping interstate PCTV tuners that do not comply with the V-Chip technology requirements because they lack the ability to block programs from viewing based on ratings or to adapt to new rating systems.<sup>5</sup>
- (j) “Parties” means Pinnacle and the Bureau.
- (k) “Pinnacle” means Pinnacle Systems, Inc. and its predecessors-in-interest and successors-in-interest.<sup>6</sup>
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Section 330(c) of the Act provides that no person shall ship in interstate commerce or manufacture in the United States television receivers that do not comply with program blocking (“V-Chip”) requirements prescribed by the Commission pursuant to its authority under section 303(x) of the Act.<sup>7</sup> In 1998, the Commission adopted V-Chip requirements for both analog and digital television (“DTV”) receivers.<sup>8</sup> In 2004, the Commission adopted specific technical standards to implement V-Chip functionality for DTV receivers.<sup>9</sup> In addition to adopting the V-Chip technical standards, the Commission also applied the programming blocking requirements to DTV tuners sold without associated display screens,<sup>10</sup> effective January 30, 2008.<sup>11</sup>

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<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Ms. Patti S. Hart, President and Chief Executive Officer, Pinnacle Systems, Inc. (October 20, 2008).

<sup>5</sup> 47 U.S.C. § 330(c); 47 C.F.R. § 15.201(d)(2).

<sup>6</sup> Since the issuance of the LOI, Pinnacle sold the division which produced and marketed PCTV tuners, and no longer manufactures or markets such devices.

<sup>7</sup> 47 U.S.C. § 330(c).

<sup>8</sup> *Technical Requirements to Enable Blocking of Video Programming Based on Program Rating, Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 11248 (1998).

<sup>9</sup> *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279 (2004).

<sup>10</sup> *Id.* at 18348 ¶ 158.

<sup>11</sup> See *Rules and Regulations, Federal Communications Commission, Parts 15, 73 and 76, Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 73 Fed. Reg. 5634, 5682 (Jan. 30, 2008).

3. On October 20, 2008, the Bureau issued an LOI to Pinnacle.<sup>12</sup> The LOI directed Pinnacle, among other things, to submit a sworn written response to a series of questions relating to the interstate shipment of PCTV tuners in potential violation of the requirement of Section 15.120(d)(2) of the Commission's Rules that they be able to allow blocking of the display of programming based on its content and be able to respond to changes in the content advisory rating system. Pinnacle responded to the LOI on November 19, 2008.<sup>13</sup> Pinnacle's response indicated the interstate shipment of a number of potentially non-compliant units. Pinnacle has subsequently informed the Bureau that it is no longer shipping PCTV tuners in interstate commerce for distribution to the public.

### III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Pinnacle agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation and dismiss the Complaint. In consideration for the termination of said investigation and dismissal of the Complaint, Pinnacle agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Pinnacle concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Pinnacle with respect to Pinnacle's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Pinnacle has taken the following steps to ensure compliance with the Act, the Commission's Rules, and the Commission's Orders:

- (a) **Compliance Officer.** Pinnacle will designate a Compliance Officer who will be responsible for implementing and administering the remedial measures.

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<sup>12</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Ms. Patti S. Hart, President and Chief Executive Officer, Pinnacle Systems, Inc. (October 20, 2008).

<sup>13</sup> See Letter from Jack N. Goodman, Wilmer Cutler Pickering Hale and Dorr LLP, to Marlene Dortch, Secretary, Federal Communications Commission (November 19, 2008).

- (b) **Remedial Measures.** Pinnacle has notified customers who registered certain models of PCTV tuners that it will provide, depending on the model, (i) a software patch for the TV Center Pro software, or (ii) a software patch for the Elgato EyeTV Lite software, which was released on January 19, 2009, and is currently available directly from the Elgato web site. Pinnacle also provides customers using non-updated software electronic notifications of the availability of these software patches when they initially install the PCTV software, when they initially run the PCTV software, and each time they run the PCTV software if their computers are connected to the Internet.<sup>14</sup> Both the TV Center Pro and the Elgato EyeTV Lite software patches are available for automatic downloading at no cost. Pinnacle has also posted a notification on its website and has made the software patch available on its website as well. Pinnacle will make the TV Center Pro software patch available until twenty-four (24) months from the Effective Date of this Consent Decree.<sup>15</sup>
- (c) **Compliance Reports.** Pinnacle will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and twenty-four months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Pinnacle, stating that the officer has personal knowledge that Pinnacle has implemented the remedial measures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Holly Berland at Holly.Berland@fcc.gov and to Kathy Berthot at Kathy.Berthot@fcc.gov.
- (d) **Termination.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months from the Effective Date.

9. **Voluntary Contribution.** Pinnacle agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$25,000 (Twenty-Five Thousand Dollars). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Pinnacle shall also send electronic notification on the date said payment is made to Holly Berland at Holly.Berland@fcc.gov and to Kathy Berthot at Kathy.Berthot@fcc.gov.

10. **Waivers.** Pinnacle waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this

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<sup>14</sup> See Letter from Jack N. Goodman, Wilmer Cutler Pickering Hale and Dorr LLP, to Marlene Dortch, Secretary, Federal Communications Commission (December 4, 2008).

<sup>15</sup> Since the Elgato EyeTV Lite software is not provided by Pinnacle, it cannot provide any assurances of the future availability of the patch for that software product.

Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Pinnacle shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Pinnacle nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Pinnacle shall waive any statutory right to a trial *de novo*. Pinnacle hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Pinnacle does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** Pinnacle agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that, by agreeing to this Consent Decree, Pinnacle does not admit or deny noncompliance, violation or liability for violating the Act or Rules in connection with the matters that are the subject of this Consent Decree.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Kris Anne Monteith  
Chief  
Enforcement Bureau

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Date

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Paige Parisi  
Secretary  
Pinnacle Systems, Inc.

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Date